

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

WILDLIFE CONSERVATION

PART 401

WILDLIFE CONSERVATION

324.40101 Meanings of words and phrases.

Sec. 40101. For purposes of this part, the words and phrases defined in sections 40102 to 40104 have the meanings ascribed to them in those sections.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.40102 Definitions; A to F.

Sec. 40102. (1) "Animals" means wild birds and wild mammals.

(2) "Bag limit" means the number of animals that may be taken and possessed as determined by the department.

(3) "Bow" means a device for propelling an arrow from a string drawn, held, and released by hand where the force used to hold the string in the drawn position is provided by the archer's muscles.

(4) "Buy" or "sell" means an exchange or attempt or offer to exchange for money, barter, or anything of value.

(5) "Chase" means to follow animals with dogs or other wild or domestic animals trained for that purpose.

(6) "Cormorant damage" means adverse impacts of double-crested cormorants on fish, fish hatchery stock, wildlife, plants, and their habitats and on man-made structures.

(7) "Cormorant depredation order" means the depredation order for double-crested cormorants to protect public resources, 50 CFR 21.48, issued by the United States department of the interior, fish and wildlife service.

(8) "Crossbow" means a weapon consisting of a bow mounted transversely on a stock or frame and designed to fire an arrow, bolt, or quarrel by the release of a bow string that is controlled by a mechanical or electric trigger and has a working safety and a draw weight of 100 pounds or greater.

(9) "Deer or elk feeding" means the depositing, distributing, or tending of feed in an area frequented by wild, free-ranging white-tailed deer or elk. Deer or elk feeding does not include any of the following:

(a) Feeding wild birds or other wildlife if done in such a manner as to exclude wild, free-ranging white-tailed deer and elk from gaining access to the feed.

(b) The scattering of feed solely as the result of normal logging practices or normal agricultural practices.

(c) The storage or use of feed for agricultural purposes if 1 or more of the following apply:

(i) The area is occupied by livestock actively consuming the feed on a daily basis.

(ii) The feed is covered to deter wild, free-ranging white-tailed deer or elk from gaining access to the feed.

(iii) The feed is in a storage facility that is consistent with normal agricultural practices.

(d) Baiting to take game as provided by an order of the commission under section 40113a.

(10) "Disability" means a determinable physical characteristic of an individual that may result from disease, injury, congenital condition of birth, or functional disorder.

(11) "Feed" means a substance composed of grain, mineral, salt, fruit, vegetable, hay, or any other food material or combination of these materials, whether natural or manufactured, that may attract white-tailed deer or elk. Feed does not include any of the following:

(a) Plantings for wildlife.

(b) Standing farm crops under normal agricultural practices.

(c) Agricultural commodities scattered solely as the result of normal agricultural practices.

(12) "Firearm" means a weapon from which a dangerous projectile may be propelled by using explosives, gas, or air. Firearm does not include a smooth bore rifle or handgun designed and manufactured exclusively for propelling BB's not exceeding .177 caliber by means of a spring, air, or gas.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 86, Imd. Eff. May 13, 1998;—Am. 1999, Act 66, Imd. Eff. June 25, 1999;—Am. 2000, Act 347, Imd. Eff. Dec. 28, 2000;—Am. 2007, Act 48, Imd. Eff. Aug. 3, 2007.

Popular name: Act 451

Popular name: NREPA

324.40103 Definitions; G to R.

Sec. 40103. (1) "Game" means any of the following animals but does not include privately owned cervidae species located on a registered cervidae livestock facility as that term is defined in the privately owned cervidae producers marketing act:

- (a) Badger.
- (b) Bear.
- (c) Beaver.
- (d) Bobcat.
- (e) Brant.
- (f) Coot.
- (g) Coyote.
- (h) Crow.
- (i) Deer.
- (j) Duck.
- (k) Elk.
- (l) Fisher.
- (m) Florida gallinule.
- (n) Fox.
- (o) Geese.
- (p) Hare.
- (q) Hungarian partridge.
- (r) Marten.
- (s) Mink.
- (t) Moose.
- (u) Muskrat.
- (v) Opossum.
- (w) Otter.
- (x) Pheasant.
- (y) Quail.
- (z) Rabbit.
- (aa) Raccoon.
- (bb) Ruffed grouse.
- (cc) Sharptailed grouse.
- (dd) Skunk.
- (ee) Snipe.
- (ff) Sora rail.
- (gg) Squirrel.
- (hh) Weasel.
- (ii) Wild turkey.
- (jj) Woodchuck.
- (kk) Woodcock.
- (ll) Virginia rail.

(2) "Interim order of the department" means an order of the department issued under section 40108.

(3) "Kind" means an animal's sex, age, or physical characteristics.

(4) "Normal agricultural practices" means generally accepted agricultural and management practices as defined by the commission of agriculture.

(5) "Open season" means the dates during which game may be legally taken.

(6) "Parts" means any or all portions of an animal, including the skin, plumage, hide, fur, entire body, or egg of an animal.

(7) "Protected" or "protected animal" means an animal or kind of animal that is designated by the department as an animal that shall not be taken.

(8) "Residence" means a permanent building serving as a temporary or permanent home. Residence may include a cottage, cabin, or mobile home, but does not include a structure designed primarily for taking game, a tree blind, a tent, a recreational or other vehicle, or a camper.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 86, Imd. Eff. May 13, 1998;—Am. 1999, Act 66, Imd. Eff. June 25, 1999;—Am. 2000, Act 191, Eff. June 1, 2001.

Compiler's note: Act 160 of 2004, which was approved by the governor and filed with the secretary of state on June 18, 2004,

provided for the amendment of Act 451 of 1994 by amending Sec. 40103 and adding Sec. 40110a. The amended and added sections were effective June 18, 2004. On March 28, 2005, a petition seeking a referendum on Act 160 of 2004 was filed with the Secretary of State. Const 1963, art 2, sec 9, provides that no law as to which the power of referendum properly has been invoked shall be effective thereafter unless approved by a majority of the electors voting thereon at the next general election. A referendum on Act 160 of 2004 was presented to the electors at the November 2006 general election as Proposal 06-3, which read as follows:

"PROPOSAL 06-3

"A REFERENDUM ON PUBLIC ACT 160 OF 2004 — AN ACT TO ALLOW THE ESTABLISHMENT OF A HUNTING SEASON FOR MOURNING DOVES

"Public Act 160 of 2004 would:

"Authorize the Natural Resources Commission to establish a hunting season for mourning doves.

"Require a mourning dove hunter to have a small game license and a \$2.00 mourning dove stamp.

"Stipulate that revenue from the stamp must be split evenly between the Game and Fish Protection Fund and the Fish and Wildlife Trust Fund.

"Require the Department of Natural Resources to address responsible mourning dove hunting; management practices for the propagation of mourning doves; and participation in mourning dove hunting by youth, the elderly and the disabled in the Department's annual hunting guide.

"Should this law be approved?

"Yes []

"No []"

Act 160 of 2004 was rejected by a majority of the electors voting thereon at the November 2006 general election.

Popular name: Act 451

Popular name: NREPA

324.40104 Definitions; T, V.

Sec. 40104. (1) "Take" means to hunt with any weapon, dog, raptor, or other wild or domestic animal trained for that purpose; kill; chase; follow; harass; harm; pursue; shoot; rob; trap; capture; or collect animals, or to attempt to engage in such an activity.

(2) "Transport" means to carry or ship animals within this state or to points outside this state.

(3) "Trap" means taking or attempting to take animals by means of a trap or other device designed to kill or capture animals.

(4) "Vehicle" means every device in, upon, or by which any person or property is or may be transported, except devices exclusively moved by human power.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.40105 Animals as property of state; taking of animals to be regulated.

Sec. 40105. All animals found in this state, whether resident or migratory and whether native or introduced, are the property of the people of the state, and the taking of all animals shall be regulated by the department as provided by law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.40106 Game or protected animal; taking, releasing, transporting, selling, buying, or possessing; construction of section.

Sec. 40106. A person shall not take, release, transport, sell, buy, or have in his or her possession game or any protected animal, whether living or dead, or parts of any game or protected animal, from this state or from outside of this state, except as provided for in this part or by an order of the department or an interim order of the department. This section does not enhance the department's powers to establish an open season for an animal that is not game or give the department the power to designate a species as game.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.40107 Management of animals; orders of department; procedures for exercising power; revision of order; filing orders to take place of former 1929 PA 286; filing and effective date of orders.

Sec. 40107. (1) The department shall manage animals in this state. In managing animals, the department may issue orders to do all of the following:

(a) Make recommendations to the legislature regarding animals that should be added or deleted from the category of game.

- (b) Determine the kinds of animals that may be taken.
 - (c) Determine the animals or kinds of animals that are protected.
 - (d) Except as otherwise provided in section 40110, establish open seasons for taking or possessing game.
 - (e) Establish lawful methods of taking game.
 - (f) Establish lawful methods of taking game for persons who have certain disabilities.
 - (g) Establish bag limits.
 - (h) Establish geographic areas within the state where certain regulations may apply to the taking of animals.
 - (i) Determine conditions under which permits may be issued by the department.
 - (j) Establish fees for the issuing of permits by the department.
 - (k) Regulate the hours during which animals may be taken.
 - (l) Require that a person involved in a chase of an animal have in his or her possession a valid license that would authorize the taking of the animal being chased.
 - (m) Establish conditions under which animals taken or possessed outside of this state may be imported into this state.
 - (n) Regulate the buying and selling of animals and parts of animals.
 - (o) Establish methods of taking animals that are primarily taken because of the value of their pelts, which methods supplement the lawful methods of taking such animals that exist on October 1, 1988.
- (2) In exercising a power under this section, the department shall comply with the following procedures in a manner that assures adequate public notice, opportunity for public comment, and due regard for traditional methods and practices that were lawful prior to October 1, 1988:
- (a) An order shall be prepared by the department after comments from department field personnel and interested persons have been solicited and considered.
 - (b) The order shall be on the department agenda for at least 1 month prior to its consideration.
 - (c) The department shall provide an opportunity for public comment on the order.
 - (d) Except as otherwise provided in this subdivision, the department prior to issuance of an order shall provide a copy of each order to each member of the senate and the house of representatives standing committees that consider legislation pertaining to conservation, environment, recreation, tourism, and natural resources. The members of the standing committees have 30 days to review and submit comments to the department regarding an order. This subdivision shall not apply to an order that does not alter the substance of a lawful provision that exists in the form of a statute, rule, regulation, or order at the time the order is prepared.
 - (e) The department shall approve, reject, or modify the order.
- (3) The department may revise an order issued pursuant to this section, and any revision of such an order shall comply with the procedure set forth in subsection (2).
- (4) Not later than January 1, 1990, the commission shall issue orders pursuant to subsection (1) and file orders with the secretary of state that the commission considers sufficient to take the place of former 1929 PA 286. The orders filed with the secretary of state pursuant to this subsection shall indicate that the orders become effective upon filing with the secretary of state. Following the effective date of this part, the department shall undertake all of the powers given to the commission in former 1988 PA 256.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 86, Imd. Eff. May 13, 1998.

Popular name: Act 451

Popular name: NREPA

324.40107a Repealed. 2003, Act 242, Eff. Jan. 4, 2009.

Compiler's note: The repealed section pertained to raptors.

Popular name: Act 451

Popular name: NREPA

324.40107b Taking of live raptors for use in falconry; order; establishment of season; scope of section.

Sec. 40107b. (1) The department shall issue an order in the manner provided in section 40107(2) establishing a season or seasons for falconers to take live raptors for use in falconry. The order shall designate the numbers of raptors that may be taken and possessed and any other conditions pertaining to the taking and possession of raptors that the department considers advisable.

(2) This section does not, and an order issued under this section shall not, designate any species of raptor as game. This section does not prohibit the department from determining that any species of raptor is a

protected animal.

History: Add. 2009, Act 36, Imd. Eff. June 4, 2009.

Popular name: Act 451

Popular name: NREPA

324.40107c Control and management of double-crested cormorants; administration of program; organization of states; funds.

Sec. 40107c. (1) To reduce cormorant damage, the department shall administer a program to control and manage double-crested cormorants. The department shall administer the program in cooperation with federal agencies and in a manner that complies with the cormorant depredation order.

(2) In consultation with the department of environmental quality, the department shall participate in a federally recognized organization of states, such as the Mississippi flyway council, to coordinate a regional effort to reduce cormorant damage that includes urging the federal government to do both of the following:

(a) Expand state options for double-crested cormorant control by revising the cormorant depredation order.

(b) Seek to amend the migratory bird convention with Mexico to designate the double-crested cormorant as a game species.

(3) The department shall seek funding from the Great Lakes protection fund authorized under part 331 for deposit in the cormorant control fund created in section 40107d.

History: Add. 2007, Act 47, Imd. Eff. Aug. 3, 2007.

Popular name: Act 451

Popular name: NREPA

324.40107d Control and management of double-crested cormorants; administration of program; organization of states; funds.

Sec. 40107d. (1) The cormorant control fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall be the administrator of the fund for auditing purposes.

(5) The department shall expend money from the fund, upon appropriation, only to implement section 40107c.

History: Add. 2007, Act 49, Imd. Eff. Aug. 3, 2007.

Popular name: Act 451

Popular name: NREPA

324.40108 Interim orders.

Sec. 40108. The department may modify an order issued under section 40107 by issuing an interim order consistent with federal regulations or when the department determines that animals are at risk of being depleted or extirpated, or the animal is threatening public safety or inflicting damage to horticulture, agriculture, or other property. The department shall publicize an interim order in a manner that ensures that interested persons are provided notice of the proposed interim order, the reasons for the requested modifications, and the proposed effective date of the order. In addition, the department shall provide a copy of an interim order to each member of the senate and the house of representatives standing committees that consider legislation pertaining to conservation, environment, recreation, tourism, and natural resources. An interim order under this section shall be in effect for not longer than 6 months.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.40109 Transportation of game; identification of sex and species; tagging; section inapplicable to skins, pelts, and hides.

Sec. 40109. If game is transported, the sex and species of the game shall be readily identifiable unless the game is game that has been cleaned at a hunting preserve and tagged as required by law. If game is transported, it shall be tagged as required by law or a department order authorized under section 40107. This section does not apply to skins, pelts, or hides of game that is lawfully taken and legally possessed.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.40110 Designation of species as game; establishment of first open season; orders.

Sec. 40110. Only the legislature may designate a species as game. If an animal is designated under this section by the legislature as game, then only the legislature may authorize the establishment of the first open season for that animal. After the legislature authorizes the establishment of the first open season for game pursuant to this section, the department may issue orders pertaining to that animal for each of the purposes listed in section 40107.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.40111 Taking animal from in or upon vehicle; transporting or possessing firearm in or upon vehicle; transporting bow in or upon vehicle; written permission to hunt or discharge firearm.

Sec. 40111. (1) Except as otherwise provided in this part or in a department order authorized under section 40107, a person shall not take an animal from in or upon a vehicle.

(2) Except as otherwise provided in this part or in a department order authorized under section 40107, a person shall not transport or have in possession a firearm in or upon a vehicle, unless the firearm is unloaded in both barrel and magazine and enclosed in a case, carried in the trunk of a vehicle, or unloaded in a motorized boat.

(3) Except as otherwise provided in this part, a person shall not transport or have in possession a bow in or upon a vehicle, unless the bow is unstrung, enclosed in a case, or carried in the trunk of a vehicle.

(4) A person shall not hunt or discharge a firearm within 150 yards of an occupied building, dwelling, house, residence, or cabin, or any barn or other building used in connection with a farm operation, without obtaining the written permission of the owner, renter, or occupant of the property.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

***** 324.40111a THIS SECTION IS REPEALED BY ACT 199 OF 2009 EFFECTIVE JANUARY 1, 2016

324.40111a Deer and elk feeding; order; definition; baiting; repeal of section.

Sec. 40111a. (1) The commission, after consultation with the commission of agriculture, shall issue in the manner provided in section 40113a an order concerning deer and elk feeding in this state.

(2) As used in this section, "deer and elk feeding" means the depositing, distributing, or tending of feed in an area frequented by wild, free-ranging white-tailed deer and elk to prevent them from starving or for recreational viewing. Deer and elk feeding does not include any of the following:

(a) Baiting to take game as provided by an order of the commission under section 40113a.

(b) The scattering of feed solely as the result of normal logging practices or normal agricultural practices.

(c) The storage or use of feed for agricultural purposes if 1 or more of the following apply:

(i) The area is occupied by livestock actively consuming the feed on a daily basis.

(ii) The feed is covered to deter wild, free-ranging white-tailed deer and elk from gaining access to the feed or is being used on a daily basis.

(iii) The feed is in a storage facility or is stored in a manner that is consistent with normal agricultural practices.

(d) Feeding wild birds or other wildlife if done in such a manner as to exclude wild, free-ranging white-tailed deer and elk from gaining access to the feed.

(3) This section is repealed effective January 1, 2016.

History: Add. 1999, Act 66, Imd. Eff. June 25, 1999;—Am. 2004, Act 537, Imd. Eff. Jan. 3, 2005;—Am. 2009, Act 199, Imd. Eff. Dec. 29, 2009.

Popular name: Act 451

Popular name: NREPA

324.40111c Use of tranquilizer propelled from bow or firearm prohibited.

Sec. 40111c. A person other than the department shall not take game using a tranquilizer propelled from a bow or firearm.

History: Add. 2008, Act 301, Imd. Eff. Nov. 13, 2008.

Popular name: Act 451

Popular name: NREPA

324.40112 Obstructing or interfering in lawful taking of animals; prohibited conduct; petition; injunction; violation as misdemeanor; penalties; section inapplicable to peace officer.

Sec. 40112. (1) A person shall not obstruct or interfere in the lawful taking of animals by another person.

(2) A person violates this section when the person intentionally or knowingly does any of the following:

(a) Drives or disturbs animals for the purpose of disrupting a lawful taking.

(b) Blocks, impedes, or harasses another person who is engaged in the process of lawfully taking an animal.

(c) Uses a natural or artificial visual, aural, olfactory, gustatory, or physical stimulus to affect animal behavior in order to hinder or prevent the lawful taking of an animal.

(d) Erects barriers to deny ingress or egress to areas where the lawful taking of animals may occur. This subdivision does not apply to a person who erects barriers to prevent trespassing on his or her property.

(e) Interjects himself or herself into the line of fire of a person lawfully taking wildlife.

(f) Affects the condition or placement of personal or public property intended for use in the lawful taking of an animal in order to impair the usefulness of the property or prevent the use of the property.

(g) Enters or remains upon private lands without the permission of the owner or the owner's agent, for the purpose of violating this section.

(h) Engages in any other act or behavior for the purpose of violating this section.

(3) Upon petition of an aggrieved person or a person who reasonably may be aggrieved by a violation of this section, a court of competent jurisdiction, upon a showing that a person was engaged in and threatens to continue to engage in illegal conduct under this section, may enjoin that conduct.

(4) A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 93 days, or a fine of not less than \$500.00 or more than \$1,000.00, or both, and the costs of prosecution. A person who violates this section a second or subsequent time is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not less than \$1,000.00 or more than \$2,500.00, or both, and the costs of prosecution. In addition to the penalties provided for in this subsection, any permit or license issued by the department authorizing the person to take animals shall be revoked. A prosecution under this section does not preclude prosecution or other action under any other criminal or civil statute.

(5) This section does not apply to a peace officer while the peace officer performs his or her lawful duties.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 316, Eff. July 1, 1996.

Popular name: Act 451

Popular name: NREPA

324.40113 Artificial light.

Sec. 40113. (1) Except as otherwise provided in a department order authorized under section 40107 for a specified animal, a person shall not use an artificial light in taking game or in an area frequented by animals; throw or cast the rays of a spotlight, headlight, or other artificial light in a field, woodland, or forest while having a bow or firearm or other weapon capable of shooting a projectile in the person's possession or under the person's control unless otherwise permitted by law. A licensed hunter may use an artificial light 1 hour before and 1 hour after shooting hours while in possession of any unloaded firearm or bow and traveling afoot to and from the licensed hunter's hunting location.

(2) Except as otherwise provided in a department order authorized under section 40107, a person shall not throw, cast, or cause to be thrown or cast, the rays of an artificial light from December 1 to October 31 between the hours of 11 p.m. and 6 a.m. for the purpose of locating animals. Except as otherwise permitted by law or an order of the department, from November 1 to November 30, a person shall not throw, cast, or cause to be thrown or cast, the rays of a spotlight, headlight, or other artificial light for the purpose of locating animals. This subsection does not apply to any of the following:

(a) A peace officer while in the performance of the officer's duties.

(b) A person operating an emergency vehicle in an emergency.

(c) An employee of a public or private utility while working in the scope of his or her employment.

(d) A person operating a vehicle with headlights in a lawful manner upon a street, highway, or roadway.

- (e) A person using an artificial light to identify a house or mailbox number.
- (f) The use of artificial lights used to conduct a census by the department.
- (g) A person using an artificial light from November 1 to November 30 on property that is owned by that person or by a member of that person's immediate family.

(3) The operator of a vehicle from which the rays of an artificial light have been cast in a clear attempt to locate game shall immediately stop the vehicle upon the request of a uniformed peace officer or when signaled by a peace officer with a flashing signal light or siren from a marked patrol vehicle.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.40113a Legislative findings and declarations; taking of game; issuance of orders.

Sec. 40113a. (1) The legislature finds and declares that:

(a) The wildlife populations of the state and their habitat are of paramount importance to the citizens of this state.

(b) The sound scientific management of the wildlife populations of the state, including hunting of bear, is declared to be in the public interest.

(c) The sound scientific management of bear populations in this state is necessary to minimize human/bear encounters and to prevent bears from threatening or harming humans, livestock, and pets.

(2) The commission of natural resources shall have the exclusive authority to regulate the taking of game as defined in section 40103 in this state. The commission of natural resources shall, to the greatest extent practicable, utilize principles of sound scientific management in making decisions regarding the taking of game. Issuance of orders by the commission of natural resources regarding the taking of game shall be made following a public meeting and an opportunity for public input. Not less than 30 days before issuing an order, the commission of natural resources shall provide a copy of the order to each of the following:

(a) Each member of each standing committee of the senate or house of representatives that considers legislation pertaining to conservation, the environment, natural resources, recreation, tourism, or agriculture.

(b) The chairperson of the senate appropriations committee and the chairperson of the house of representatives appropriations committee.

(c) The members of the subcommittee of the senate appropriations committee and the subcommittee of the house of representatives appropriations committee that consider the budget of the department of natural resources.

History: Add. 1996, Act 377, Eff. Dec. 5, 1996;—Am. 1997, Act 19, Imd. Eff. June 12, 1997.

Compiler's note: This section, as added by Act 377 of 1996, was submitted to, and approved by, the electors of the state at the general election held on November 5, 1996.

Popular name: Act 451

Popular name: NREPA

324.40114 Permits and licenses; paraplegics, amputees, and permanently disabled; issuance of permit for certain purposes; taking of game with modified bow; suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of permit; disposition of fees.

Sec. 40114. (1) The department may issue a permit to a person who is unable to walk because the person is a paraplegic or an amputee or because of a disease or injury that has rendered the person permanently disabled. A permit issued under this subsection authorizes the person to take game during the open season for that game, including deer of either sex, from or upon a standing vehicle if that person holds a license to take that game issued pursuant to part 435 and complies with all other laws and rules for the taking of game.

(2) The department may issue a permit to a person who is permanently disabled, who has full use of only 1 arm, and who upon investigation is unable to hold, aim, and shoot a bow. A permit issued under this subsection authorizes the person to take game during the open season for that game with a bow that has been modified so that the bow may be held, aimed, and shot with 1 arm, if that person holds a license to take that game issued pursuant to part 435 and complies with all other laws and rules for the taking of game.

(3) The commission may issue an order under section 40113a regulating the taking of game with a modified bow that may be shot with 1 arm. Subsection (2) does not apply on or after the effective date of such an order.

(4) In addition, the department may issue permits authorizing 1 or more of the following:

(a) The taking or possession of animals for the purpose of rehabilitating animals.

(b) The taking of animals to prevent or control damage and nuisance caused by the animals.

(c) The collection, transportation, possession, or disposition of animals and parts of animals for scientific purposes.

(d) The public exhibition of animals.

(e) Taxidermy.

(f) The disposition of accidentally or unlawfully taken or injured animals or animals that are unlawfully possessed.

(g) The taking of game with a crossbow by a person who is permanently or temporarily disabled.

(5) A permit issued under this section may be suspended, revoked, annulled, withdrawn, recalled, canceled, or amended pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. If the holder of a permit is convicted of violating the permit or this section, his or her permit or license may be revoked and any animal and the parts of any animal in his or her possession shall be disposed of in a manner approved by the department.

(6) Fees received for permits and licenses issued under this section shall be forwarded by the department to the state treasurer to be credited to the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2008, Act 169, Imd. Eff. July 2, 2008;—Am. 2009, Act 109, Imd. Eff. Oct. 1, 2009.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.40115 Repealed. 2000, Act 347, Eff. July 1, 2000.

Compiler's note: The repealed section pertained to issuance of permit to person with a disability.

Popular name: Act 451

Popular name: NREPA

324.40116 Hunter orange; exceptions; noncompliance not as evidence of contributory negligence; "hunter orange" defined.

Sec. 40116. (1) A person shall not take game during the established daylight shooting hours from August 15 through April 30 unless the person wears a cap, hat, vest, jacket, or rain gear of hunter orange. Hunter orange includes camouflage that is not less than 50% hunter orange. The garments that are hunter orange shall be the hunter's outermost garment and shall be visible from all sides of the hunter.

(2) Subsection (1) does not apply to a person engaged in the taking of deer with a bow or crossbow during archery deer season, a person taking bear with a bow or crossbow, a person engaged in the taking of turkey or migratory birds other than woodcock, a person engaged in the sport of falconry, or a person who is stationary and in the act of hunting bobcat, coyote, or fox.

(3) The failure of a person to comply with this section is not evidence of contributory negligence in a civil action for injury to the person or for the person's wrongful death.

(4) As used in this section, "hunter orange" means the highly visible color commonly referred to as hunter orange and includes blaze orange, flame orange, and fluorescent blaze orange.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 154, Imd. Eff. Apr. 3, 1996;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2009, Act 65, Imd. Eff. July 2, 2009.

Popular name: Act 451

Popular name: NREPA

324.40117 Possession of parts of animal as prima facie evidence of violation.

Sec. 40117. In a prosecution for a violation of this part or an order or interim order issued under this part, the possession of the parts of any game or protected animal, except when the taking is permitted by this part, is prima facie evidence that the animal was taken in violation of this part by the person possessing the animal.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2000, Act 347, Imd. Eff. Dec. 28, 2000.

Popular name: Act 451

Popular name: NREPA

324.40118 Violation as misdemeanor; penalty.

Sec. 40118. (1) A person who violates this part, an order or interim order issued under this part, or a condition of a permit issued under this part, except for a violation specified in subsections (2) to (12), is guilty

of a misdemeanor punishable by imprisonment for not more than 90 days, or a fine of not less than \$50.00 or more than \$500.00, or both, and the costs of prosecution. In addition, a permit issued by the department under this part shall be revoked pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) A person who violates a provision of this part or an order or interim order issued under this part regarding the possession or taking of any game, except deer, bear, wild turkey, moose, or elk, is guilty of a misdemeanor punishable by imprisonment for not more than 90 days, or a fine of not less than \$100.00 or more than \$1,000.00, or both, and the costs of prosecution.

(3) A person who violates a provision of this part or an order or interim order issued under this part regarding the possession or taking of deer, bear, or wild turkey is guilty of a misdemeanor and shall be punished by imprisonment for not less than 5 days or more than 90 days, and a fine of not less than \$200.00 or more than \$1,000.00, and the costs of prosecution.

(4) A person who violates a provision of this part or an order or interim order issued under this part regarding the possession or taking of elk is guilty of a misdemeanor punishable by imprisonment for not less than 30 days or more than 180 days, or a fine of not less than \$500.00 or more than \$2,000.00, or both, and the costs of prosecution.

(5) A person who violates a provision of this part or an order or interim order issued under this part regarding the possession or taking of moose is guilty of a misdemeanor and shall be punished by imprisonment for not less than 90 days or more than 1 year and a fine of not less than \$1,000.00 or more than \$5,000.00, and the costs of prosecution.

(6) A person sentenced pursuant to subsection (3), (4), (5), (10), or (11) shall not secure or possess a license of any kind to hunt during the remainder of the year in which convicted and the next 3 succeeding calendar years. A person sentenced pursuant to subsection (7) shall not secure or possess a license to hunt during the remainder of the year in which convicted and the next succeeding calendar year.

(7) A person who violates section 40113(1) is guilty of a misdemeanor punishable by imprisonment for not less than 5 days or more than 90 days, or a fine of not less than \$100.00 or more than \$500.00, or both, and the costs of prosecution.

(8) A person who violates section 40113(2) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days, or a fine of not less than \$50.00 or more than \$500.00, or both, and the costs of prosecution.

(9) A person who violates section 40113(3) is guilty of a misdemeanor and shall be punished by imprisonment for not less than 5 days or more than 90 days and a fine of not less than \$100.00 or more than \$500.00, and the costs of prosecution.

(10) A person who violates a provision of this part or an order or interim order issued under this part regarding the taking or possession of an animal that has been designated by the department to be a protected animal, other than an animal that appears on a list prepared pursuant to section 36505, is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than \$100.00 or more than \$1,000.00, or both, and the costs of prosecution.

(11) A person who buys or sells game or a protected animal in violation of this part or an order or interim order issued under this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$1,000.00, or both, for the first offense, and is guilty of a felony for each subsequent offense.

(12) If a person is convicted of a violation of this part or an order or interim order issued under this part and it is alleged in the complaint and proved or admitted at trial or ascertained by the court after conviction that the person had been previously convicted 2 times within the preceding 5 years for a violation of this part or an order or interim order issued under this part, the person is guilty of a misdemeanor and shall be punished by imprisonment for not less than 10 days or more than 180 days, and a fine of not less than \$500.00 or more than \$2,000.00, and costs of prosecution.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2000, Act 347, Imd. Eff. Dec. 28, 2000.

Popular name: Act 451

Popular name: NREPA

324.40119 Reimbursement of state for value of game or protected animal; forfeiture; payment; default as civil contempt; additional time for payment; reduction of amount forfeited; revocation of forfeiture; collection of default in payment; disposition of forfeiture damages.

Sec. 40119. (1) In addition to the penalties provided for violating this part or an order issued under this

part, and the penalty provided in section 36507, a person convicted of the illegal killing, possessing, purchasing, or selling, of game or protected animals, in whole or in part, shall reimburse the state for the value of the game or protected animal as follows:

(a) Bear, elk, hawk, moose, or any animal that appears on a list specified in section 36505, \$1,500.00 per animal.

(b) Deer, owl, and wild turkey, \$1,000.00 per animal.

(c) Other game not listed in subdivision (a) or (b), not less than \$100.00 or more than \$500.00 per animal.

(d) Other protected animals, \$100.00 per animal.

(2) The court in which a conviction for a violation described in subsection (1) is obtained shall order the defendant to forfeit to the state a sum as set forth in subsection (1). If 2 or more defendants are convicted of the illegal killing, possessing, purchasing, or selling, in whole or in part, of game or protected animals listed in subsection (1), the forfeiture prescribed shall be declared against them jointly.

(3) If a defendant fails to pay upon conviction the sum ordered by the court to be forfeited, the court shall either impose a sentence and, as a condition of the sentence, require the defendant to satisfy the forfeiture in the amount prescribed and fix the manner and time of payment, or make a written order permitting the defendant to pay the sum to be forfeited in installments at those times and in those amounts that, in the opinion of the court, the defendant is able to pay.

(4) If a defendant defaults in payment of the sum forfeited or of an installment, the court on motion of the department or upon its own motion may require the defendant to show cause why the default should not be treated as a civil contempt, and the court may issue a summons or warrant of arrest for his or her appearance. Unless the defendant shows that the default was not due to an intentional refusal to obey the order of the court or to a failure to make a good faith effort to obtain the funds required for the payment, the court shall find that the default constitutes a civil contempt.

(5) If it appears that the defendant's default in the payment of the forfeiture does not constitute civil contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the forfeiture or of each installment, or revoking the forfeiture or the unpaid portion of the forfeiture, in whole or in part.

(6) A default in the payment of the forfeiture or an installment payment may be collected by any means authorized for the enforcement of a judgment under chapter 60 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6001 to 600.6098.

(7) A court receiving forfeiture damages shall remit the damages to the county treasurer, who shall deposit the damages with the state treasurer, who shall deposit the damages in the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.40120 Michigan big game trophy records; official keeper; recognition.

Sec. 40120. The department shall recognize commemorative bucks of Michigan, inc., as the official keeper of Michigan big game trophy records for deer, bear, elk, and turkey.

History: Add. 2006, Act 145, Imd. Eff. May 22, 2006.

Popular name: Act 451

Popular name: NREPA

PART 403

WILDLIFE PRESERVATION

324.40301 Sale of items signifying interest in wildlife preservation.

Sec. 40301. The department may issue for sale to the public a stamp, decal, medallion, or other item of personal property intended to signify the interest of the purchaser in contributing to wildlife preservation.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.40302 Use of net proceeds.

Sec. 40302. Net proceeds from the sale of an item authorized by this part shall be used by the department exclusively for wildlife research and habitat improvement for nongame wild animals or designated endangered species or designated plant species.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.40303 Rights and privileges; marketing items.

Sec. 40303. The department may attach such rights and privileges to the items sold as will best serve the interests of wildlife preservation and shall market the items without the use of general fund appropriation.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 405

WILDLIFE RESTORATION, MANAGEMENT, AND RESEARCH

324.40501 Wildlife restoration, management, and research projects; authority of department to cooperate with federal government; use of hunters' license fees.

Sec. 40501. The department shall perform such acts as may be necessary to conduct and establish wildlife restoration, management, and research projects and areas in cooperation with the federal government under the Pittman-Robertson wildlife restoration act, 16 USC 669 to 669i, and regulations promulgated by the United States secretary of the interior under that act. In compliance with that act, funds accruing to this state from license fees paid by hunters shall not be used for any purpose other than game and fish activities under the administration of the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2008, Act 416, Imd. Eff. Jan. 6, 2009.

Popular name: Act 451

Popular name: NREPA

PART 409

HOMING PIGEONS

324.40901 Homing pigeons; prohibited acts.

Sec. 40901. A person shall not at any time of the year or in any manner, hunt, take, pursue, capture, wound, kill, maim, or disfigure the homing pigeons of another person.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.40902 Homing pigeons; use of certain devices prohibited.

Sec. 40902. A person shall not at any time make use of any pit, pitfalls, deadfall, scaffold, cage, snarl, trap, net, baited hook, or any similar device, or any drug poison, chemical, or explosive for the purpose of injuring, capturing, or killing a homing pigeon of another person.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.40903 Violation of part as misdemeanor; penalty.

Sec. 40903. A person who violates this part, upon conviction of a first offense, is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not less than \$25.00 or more than \$100.00 and the cost of prosecution, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 411

PROTECTION AND PRESERVATION OF FISH, GAME, AND BIRDS

324.41101 Definitions.

Sec. 41101. As used in this part:

(a) "Area" means the whole of the state and the whole or any designated portion of any township or townships or county or counties within the state.

(b) "Waters" means any inland lake, stream, river, pond, or other body of water including the Great Lakes and connecting waters, any part or portion of such waters, and any and all chains, systems, or combinations of such waters, in any township or townships or county or counties, within this state, and in which any species of fish or waterfowl are protected by the laws of this state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.41102 Regulatory powers of department; exception.

Sec. 41102. (1) The department, in accordance with this part, may regulate the taking or killing of all fish, game and fur-bearing animals, and game birds protected by the laws of this state, and may suspend or abridge the open season provided by law for the taking or killing of such fish, animals, or game birds in any designated waters or area of this state, if in the opinion of the department it is necessary to assist in the increased or better protection of the fish, game or fur-bearing animals, or game birds, or any particular kinds or species of fish, game or fur-bearing animals, or game birds, which may in the opinion of the department be threatened from any cause or causes with depletion or extermination in the waters or area. The department may promulgate rules and orders necessary to implement this part after a thorough investigation has been made by the department.

(2) This section does not apply to privately owned cervidae species located on a registered cervidae livestock facility or involved in a registered cervidae livestock operation under the privately owned cervidae producers marketing act.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2000, Act 191, Eff. June 1, 2001.

Popular name: Act 451

Popular name: NREPA

324.41103 Orders protecting fish, animals, or birds; provisions; duration; notice; newspaper publication; filing; printing order in Michigan fish and game laws; fisheries research; experimental game management areas; notice of availability of annual sports fishing handbook and amendments, corrections, or additions thereto.

Sec. 41103. (1) If the department determines that any fish, game or fur-bearing animals, or game birds of any kind or species are in danger of depletion or extermination and require additional protection in any designated waters or area within the state, the department may issue an order suspending or abridging the open season on fish, game or fur-bearing animals, or game birds, or may regulate their taking or killing in the waters or area as the department considers necessary for the further protection of fish, game or fur-bearing animals, or game birds in those waters or areas. The orders shall clearly specify the manner and condition relative to the taking or killing. The orders shall clearly and distinctly describe and set forth the waters or area affected by each order, and whether the order is applicable to all fish, game or fur-bearing animals, or game birds, or only to certain kinds or species designated in the order, and shall also clearly specify and set forth the length of time during which the order shall remain in effect. However, an order shall not remain in effect for more than 5 years. The public shall be notified of orders changing the rules pertaining to hunting, fishing, or trapping in the annual hunting, fishing, and trapping guides available by licensed agents of the department and field offices of the department or the department may publish the orders at least 21 days but not more than 60 days prior to taking effect, and at least once annually while in force, in at least 1 newspaper in each county, if a newspaper is published in a county, the whole or any portion of which is affected by the order. The first newspaper publication shall appear at least once each week for 3 successive weeks. A copy of the order as printed in the newspaper shall be filed with the clerk of each county. Proof by affidavit of the newspaper publication or other form of publication allowed in this section shall be filed with the department, and a copy of the order, while it is in force and effect, shall be included and printed in the authorized biennial compilation of the Michigan fish and game laws. The original of all orders on file in the Lansing office of the department shall be under the seal of the department and shall bear the signatures of the chairperson and secretary of the commission and shall be countersigned by the department. The department shall establish the seasons, size limits, creel limits, and methods of taking fish in certain designated inland lakes not to exceed 20 in number at any 1 time and in certain designated streams or portions of streams not to exceed 10 in number at any 1 time

for the purpose of fisheries research. The department may establish not more than 1 experimental game management area that shall not exceed 40,000 acres in size, 4 experimental game management areas not to exceed 5,000 acres each in size, and 1 experimental game management area that shall include Beaver island in its entirety and the 4 islands that comprise the Little Beaver islands state game area. The department shall establish rules and orders governing the kind of game that may be taken in the areas designated in this subsection and the time, place, and manner or method of the taking.

(2) The department shall publish annually in 1 or more newspapers of general circulation in this state notice of the availability of the annual sports fishing handbook. The published notice shall inform the public of when, where, and how the annual sports fishing handbook may be obtained.

(3) The department shall notify the public of an amendment, correction, or addition to the annual sports fishing handbook in the same manner as provided for newspaper publication in subsection (1).

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.41104 Suspended open season; rescission or modification; exception.

Sec. 41104. If the open season during which any species of fish, game or fur-bearing animals, or game birds may be taken or killed has been suspended or abridged in any waters or area by an order of the department as provided in this part, if that order is still in force, and if it appears to the department that the conditions existing in the waters or area affected by the order no longer require that additional protection for those species, then the department shall cause a thorough investigation to be made of the waters or area and the conditions prevailing in the waters or area. If after the investigation the department is satisfied that because of the increase of the fish, game or fur-bearing animals, or game birds protected by the order in the waters or area, or because of the removal of the cause threatening those species with depletion or extermination, the additional protection afforded by the order is no longer needed, the department may rescind or modify the original order. Notices of the rescinding or modifying of the order shall be published in the same manner as notice of the original order and filed in the same manner in the office of the clerk of each county. This part does not suspend, abridge, or regulate the open seasons established by law for the taking of fish for commercial purposes from the waters of Lakes Superior, Michigan, Huron, and Erie, and the bays of those waters.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.41105 Violation as misdemeanor; penalty.

Sec. 41105. A person who takes or kills any fish, game, or fur-bearing animal, or game bird, contrary to an order or rule promulgated under this part, or who violates this part, is guilty of a misdemeanor, punishable for the first offense by imprisonment for not more than 60 days or a fine of not more than \$100.00. For each offense that is charged as a second or subsequent offense, the person is guilty of a misdemeanor, punishable by imprisonment for not less than 20 days or more than 90 days, or a fine of not less than \$50.00 or more than \$250.00.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 413

TRANSGENIC AND NONNATIVE ORGANISMS

324.41301 Definitions; possession of live organism.

Sec. 41301. (1) As used in this part:

(a) "Genetically engineered" refers to an organism whose genome, chromosomal or extrachromosomal, is modified permanently and heritably, using recombinant nucleic acid techniques, or the progeny of such an organism.

(b) "Introduce", with reference to an organism, means to knowingly and willfully stock, place, plant, release, or allow the release of the organism in this state at any specific location where the organism is not already naturalized.

(c) "Prohibited species", subject to section 41302, means any of the following:

(i) Any of the following prohibited aquatic plant species, including a hybrid or genetically engineered

variant of the species or a fragment, including a seed or other propagule, of the species or of a hybrid or genetically engineered variant:

- (A) African oxygen weed (*Lagarosiphon major*).
- (B) Brazilian elodea (*Egeria densa*).
- (C) Cyllindro (*Cylindrospermopsis raciborskii*).
- (D) European frogbit (*Hydrocharis morsus-ranae*).
- (E) Fanwort (*Cabomba caroliniana*).
- (F) Giant hogweed (*Heracleum mantegazzianum*).
- (G) Giant salvinia (*Salvinia molesta*, *auriculata*, *biloba*, or *herzogii*).
- (H) Hydrilla (*Hydrilla verticillata*).
- (I) Japanese knotweed (*Fallopia japonica*).
- (J) Parrot's feather (*Myriophyllum aquaticum*).
- (K) Starry stonewort (*Nitellopsis obtusa*).
- (L) Water chestnut (*Trapa natans*).
- (M) Yellow floating heart (*Nymphoides peltata*).

(ii) The following prohibited bird species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant: Eurasian collared dove (*Streptopelia decaocto*).

(iii) The following prohibited crustacean species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant: rusty crayfish (*Orconectes rusticus*).

(iv) Any of the following prohibited fish species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant:

- (A) Bighead carp (*Hypophthalmichthys nobilis*).
- (B) Bitterling (*Rhodeus sericeus*).
- (C) Black carp (*Mylopharyngodon piceus*).
- (D) Eurasian ruffe (*Gymnocephalus cernuus*).
- (E) Grass carp (*Ctenopharyngodon idellus*).
- (F) Ide (*Leuciscus idus*).
- (G) Japanese weatherfish (*Misgurnus anguillicaudatus*).
- (H) Round goby (*Neogobius melanostomus*).
- (I) Rudd (*Scardinius erythrophthalmus*).
- (J) Silver carp (*Hypophthalmichthys molitrix*).
- (K) A fish of the snakehead family (family *Channidae*).
- (L) Tench (*Tinca tinca*).
- (M) Tubenose goby (*Proterorhinus marmoratus*).

(v) Any of the following prohibited insect species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant:

- (A) Asian longhorned beetle (*Anoplophora glabripennis*).
- (B) Emerald ash borer (*Agrilus planipennis*).

(vi) The following prohibited mammal species, including a hybrid or genetically engineered variant: nutria (*Myocastor coypus*).

(vii) Any of the following prohibited mollusk species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant:

- (A) Brown garden snail (*Helix aspersa*).
- (B) Carthusian snail (*Monacha cartusiana*).
- (C) Giant African snail (*Achatina fulica*).
- (D) Girdled snail (*Hygromia cinctella*).
- (E) Heath snail (*Xerolenta obvia*).
- (F) Wrinkled dune snail (*Candidula intersecta*).

(d) "Recombinant nucleic acid techniques" means laboratory techniques through which genetic material is isolated and manipulated in vitro and then inserted into an organism.

(e) "Restricted species", subject to section 41302, means any of the following:

(i) Any of the following restricted aquatic plant species, including a hybrid or genetically engineered variant of the species or a fragment, including a seed or other propagule, of the species or of a hybrid or genetically engineered variant:

- (A) Curly leaf pondweed (*Potamogeton crispus*).
- (B) Eurasian watermilfoil (*Myriophyllum spicatum*).

- (C) Flowering rush (*Butomus umbellatus*).
- (D) Phragmites or common reed (*Phragmites australis*).
- (E) Purple loosestrife (*Lythrum salicaria*), except that cultivars of purple loosestrife developed and recognized to be sterile and approved by the director of the department of agriculture under section 16a of the insect pest and plant disease act, 1931 PA 189, MCL 286.216a, are not a restricted species.
- (ii) Any of the following restricted mollusk species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant:
 - (A) Quagga mussel (*Dreissena bugensis*).
 - (B) Zebra mussel (*Dreissena polymorpha*).
- (2) For the purposes of this part:
 - (a) A person is not considered to possess a live organism simply because the organism is present on land or in waters owned by that person unless the person has knowingly introduced that live organism on that land or in those waters.
 - (b) A person is not considered to possess a live organism if the organism was obtained from the environment and the person only possesses the organism at the specific location at which it was obtained from the environment.
 - (c) A person is not considered to possess a live organism if the possession is for the purpose of promptly destroying the organism.

History: Add. 2003, Act 270, Eff. Mar. 30, 2004;—Am. 2005, Act 77, Imd. Eff. July 19, 2005;—Am. 2009, Act 51, Eff. Sept. 21, 2009.

Popular name: Act 451

Popular name: NREPA

324.41302 Adding or deleting from list of prohibited species or restricted species; consultation; procedure; determination.

Sec. 41302. (1) The commission of natural resources may by order add to or delete from the list of prohibited species or restricted species under section 41301 any species other than an insect or plant species. Before issuing an order under this subsection, the commission of natural resources shall consult with the department of agriculture. After the consultation, and at least 30 days before the commission of natural resources issues the order, the department of natural resources shall post a copy of the proposed order on the department of natural resources' website and shall submit a copy of the proposed order to all of the following:

- (a) The legislature.
- (b) The standing committees of the senate and house of representatives with primary responsibility for any of the following:
 - (i) Agricultural issues.
 - (ii) Environmental issues.
 - (iii) Natural resources issues.
- (2) The commission of agriculture may by order add to or delete from the list of prohibited species or restricted species under section 41301 any insect or plant species. Before issuing an order under this subsection, the commission of agriculture shall consult with the department of natural resources. After the consultation, and at least 30 days before the commission of agriculture issues the order, the department of agriculture shall post a copy of the proposed order on the department of agriculture's website and shall submit a copy of the proposed order to all of the following:
 - (a) The legislature.
 - (b) The standing committees of the senate and house of representatives with primary responsibility for any of the following:
 - (i) Agricultural issues.
 - (ii) Environmental issues.
 - (iii) Natural resources issues.
- (3) The commission of natural resources or the commission of agriculture, as applicable, shall list a species as a prohibited species or restricted species if the commission of natural resources or commission of agriculture, respectively, determines the following:
 - (a) For a prohibited species, all of the following requirements are met:
 - (i) The organism is not native to this state.
 - (ii) The organism is not naturalized in this state or, if naturalized, is not widely distributed in this state.
 - (iii) One or more of the following apply:
 - (A) The organism has the potential to harm human health or to severely harm natural, agricultural, or silvicultural resources.

- (B) Effective management or control techniques for the organism are not available.
 - (b) For a restricted species, all of the following requirements are met:
 - (i) The organism is not native to this state.
 - (ii) The organism is naturalized and widely distributed in this state.
 - (iii) One or more of the following apply:
 - (A) The organism has the potential to harm human health or to harm natural, agricultural, or silvicultural resources.
 - (B) Effective management or control techniques for the organism are available.
- History:** Add. 2009, Act 52, Eff. Sept. 21, 2009.
- Popular name:** Act 451
- Popular name:** NREPA

324.41303 Possession of live prohibited or restricted organism; prohibition; exceptions; notification of location where found.

Sec. 41303. (1) Subject to subsection (2), a person shall not knowingly possess a live organism if the organism is a prohibited species or restricted species, except under 1 or more of the following circumstances:

(a) The person intends to present a specimen of the prohibited species or restricted species, for identification or similar purposes, to a person who is a certified applicator or registered applicator under part 83, to a public or private institution of higher education, or to the department of natural resources, the department of agriculture, or any other state, local, or federal agency with responsibility for the environment, natural resources, or agriculture.

(b) The person has been presented with a specimen of a prohibited species or restricted species for identification or similar purposes under subdivision (a).

(c) The person possesses the prohibited species or restricted species in conjunction with otherwise lawful activity to eradicate or control the prohibited species or restricted species.

(d) If the prohibited species or restricted species is not an insect or plant species, the possession is pursuant to a permit issued for education or research purposes by the department of natural resources under section 41306. If the prohibited species or restricted species is an insect or plant species, the possession is pursuant to a permit issued for education or research purposes by the department of agriculture under section 41306 or by the United States department of agriculture.

(2) A person described in subsection (1)(b) or (c) shall notify the department of natural resources, the department of agriculture, or the department of environmental quality if the prohibited species or restricted species was found at a location where it was not previously known to be present.

History: Add. 2003, Act 270, Eff. Mar. 30, 2004;—Am. 2005, Act 78, Imd. Eff. July 19, 2005;—Am. 2009, Act 52, Eff. Sept. 21, 2009.

Popular name: Act 451

Popular name: NREPA

324.41305 Introduction of prohibited or restricted species, or genetically engineered or nonnative aquatic plant, bird, crustacean, fish, mammal, or mollusk; exceptions.

Sec. 41305. A person shall not introduce a prohibited species, a restricted species, or a genetically engineered or nonnative aquatic plant, bird, crustacean, fish, mammal, or mollusk unless the introduction is authorized by 1 of the following, as applicable:

(a) For a fish, by a permit issued by the department of natural resources under section 48735.

(b) For an insect or plant, by a permit issued by the department of agriculture under section 41306.

(c) For any other species, by a permit issued by the department of natural resources under section 41306.

History: Add. 2003, Act 270, Eff. Mar. 30, 2004;—Am. 2005, Act 79, Imd. Eff. July 19, 2005;—Am. 2009, Act 52, Eff. Sept. 21, 2009.

Popular name: Act 451

Popular name: NREPA

324.41306 Permit; application; fee; approval; revocation; modification; hearing; administration; enforcement.

Sec. 41306. (1) A person shall apply for a permit that section 41303 or 41305 describes as being issued by the department of natural resources or the department of agriculture under this section on a form developed by the department of natural resources or the department of agriculture, respectively. The application shall be accompanied by a fee based on the cost of administering this part. The department of natural resources or the department of agriculture, respectively, shall either grant an administratively complete application and issue a

permit or deny the application.

(2) In determining whether to grant or deny an application for a permit for introduction of a genetically engineered organism required by section 41305, the department of natural resources or the department of agriculture, as applicable, shall consider whether any application for a federal permit or approval for the genetically engineered organism has been granted or denied.

(3) The department of natural resources or the department of agriculture may revoke or modify a permit issued by the department of natural resources or the department of agriculture, respectively, under subsection (1) after providing an opportunity for a hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(4) The department of natural resources shall administer and enforce this part, except with respect to insect and plant species. The department of agriculture shall administer and enforce this part with respect to insect or plant species. In addition, any peace officer may enforce the criminal provisions of this part.

History: Add. 2005, Act 79, Imd. Eff. July 19, 2005;—Am. 2009, Act 52, Eff. Sept. 21, 2009.

Popular name: Act 451

Popular name: NREPA

324.41307 Rules.

Sec. 41307. The department shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, necessary to implement this part.

History: Add. 2003, Act 270, Eff. Mar. 30, 2004.

Popular name: Act 451

Popular name: NREPA

324.41309 Violation; penalties; liability for damages to natural resources; exceptions.

Sec. 41309. (1) A person who violates section 41303(2) is subject to a civil fine of not more than \$100.00.

(2) A person who violates section 41303(1), or a condition of a permit issued under this part, with respect to a restricted species is subject to a civil fine of not more than \$5,000.00. A person who violates section 41303(1), or a condition of a permit issued under this part, with respect to a prohibited species is subject to a civil fine of not more than \$10,000.00.

(3) A person who violates section 41303(1) knowing the possession is unlawful or who willfully or in a grossly negligent manner violates a condition of a permit issued under this part is guilty as follows:

(a) For a violation involving a restricted species, the person is guilty of a misdemeanor and may be imprisoned for not more than 1 year and shall be fined not less than \$1,000.00 or more than \$10,000.00.

(b) For a violation involving a prohibited species, the person is guilty of a felony and may be imprisoned for not more than 2 years and shall be fined not less than \$2,000.00 or more than \$20,000.00.

(4) A person who, with intent to damage natural, agricultural, or silvicultural resources or human health:

(a) Violates section 41303(1) with respect to a restricted species or possesses a nonnative aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk is guilty of a felony and may be imprisoned for not more than 2 years and shall be fined not less than \$1,000.00 or more than \$250,000.00.

(b) Violates section 41303(1) with respect to a prohibited species or possesses a genetically engineered aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk is guilty of a felony and may be imprisoned for not more than 4 years and shall be fined not less than \$2,000.00 or more than \$500,000.00.

(5) A person who sells or offers to sell a restricted species is subject to a civil fine of not less than \$1,000.00 or more than \$10,000.00. A person who sells or offers to sell a prohibited species is subject to a civil fine of not less than \$2,000.00 or more than \$20,000.00.

(6) A person who violates section 41305 is guilty as follows:

(a) For a violation involving a restricted species or a nonnative aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk, the person is guilty of a misdemeanor and may be imprisoned for not more than 6 months and shall be fined not less than \$500.00 or more than \$5,000.00.

(b) For a violation involving a prohibited species or a genetically engineered aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk, the person is guilty of a misdemeanor and may be imprisoned for not more than 1 year and shall be fined not less than \$1,000.00 or more than \$10,000.00.

(7) A person who violates section 41305 with respect to a restricted species or nonnative aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk and who knows or should know the identity of the restricted species or that the organism, whether a restricted species or other aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk, is nonnative is guilty of a misdemeanor and may be imprisoned for not more than 1 year and shall be fined not less than \$1,000.00 or more than \$10,000.00.

(8) A person who violates section 41305 with respect to a prohibited species or a genetically engineered aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk and who knows or should know the identity of the prohibited species or that the aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk is genetically engineered, respectively, is guilty of a felony and may be imprisoned for not more than 2 years and shall be fined not less than \$2,000.00 or more than \$20,000.00.

(9) A person who violates section 41305 knowing the introduction is unlawful, is guilty as follows:

(a) For a violation involving a restricted species or nonnative aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk, the person is guilty of a felony and may be imprisoned for not more than 2 years and shall be fined not less than \$1,000.00 or more than \$250,000.00.

(b) For a violation involving a prohibited species or a genetically engineered aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk, the person is guilty of a felony and may be imprisoned for not more than 4 years and shall be fined not less than \$2,000.00 or more than \$500,000.00.

(10) A person who, with intent to damage natural, agricultural, or silvicultural resources or human health, violates section 41305 is guilty as follows:

(a) For a violation involving a restricted species or nonnative aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk, the person is guilty of a felony and may be imprisoned for not more than 3 years and shall be fined not less than \$1,000.00 or more than \$500,000.00.

(b) For a violation involving a prohibited species or a genetically engineered aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk, the person is guilty of a felony and may be imprisoned for not more than 5 years and shall be fined not less than \$2,000.00 or more than \$1,000,000.00.

(11) In addition to any other civil or criminal sanction imposed under this section, a person who violates this part is liable for any damages to natural resources resulting from the violation, including, but not limited to, costs incurred to prevent or minimize such damages.

(12) This part does not apply to activities authorized under the Michigan aquaculture development act, 1996 PA 199, MCL 286.871 to 286.884.

History: Add. 2003, Act 270, Eff. Mar. 30, 2004;—Am. 2005, Act 76, Imd. Eff. July 19, 2005;—Am. 2009, Act 52, Eff. Sept. 21, 2009.

Popular name: Act 451

Popular name: NREPA

324.41311 Invasive species fund; creation; disposition of funds; money remaining in fund; expenditures; purposes.

Sec. 41311. (1) The invasive species fund is created within the state treasury.

(2) The department of natural resources and the department of agriculture shall forward to the state treasurer and the state treasurer shall deposit into the fund civil fines collected under section 41309 and permit fees collected under section 41306. The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department of natural resources and the department of agriculture shall expend money from the fund, upon appropriation, only for 1 or more of the following purposes:

(a) The administration of this part, consistent with section 41306(4).

(b) Public education about preventing the introduction of, controlling, or eradicating prohibited species, restricted species, and other nonnative species and genetically engineered aquatic plants, birds, crustaceans, fish, insects, mammals, and mollusks.

History: Add. 2005, Act 80, Imd. Eff. July 19, 2005;—Am. 2009, Act 52, Eff. Sept. 21, 2009.

Popular name: Act 451

Popular name: NREPA

324.41313 Providing information on website; requirements.

Sec. 41313. The department of natural resources and the department of agriculture shall each provide all of the following information on its website:

(a) Information on the requirements of this part applicable to the public.

(b) The penalties for violating the requirements of this part.

(c) A list of prohibited species and restricted species along with a description and a photograph or drawing of each of those species.

(d) Each annual report of the department under section 41323, for not less than 3 years after its issuance.

History: Add. 2005, Act 80, Imd. Eff. July 19, 2005;—Am. 2009, Act 52, Eff. Sept. 21, 2009.

Popular name: Act 451

Popular name: NREPA

324.41321 Repealed. 2009, Act 51, Eff. Sept. 21, 2009.

Compiler's note: The repealed section pertained to the invasive species advisory council.

Popular name: Act 451

Popular name: NREPA

324.41323 Duties of department.

Sec. 41323. (1) The department of natural resources shall do all of the following:

(a) By March 1 of each year, submit to the governor and the legislature a report that makes recommendations on all of the following:

(i) Additions to or deletions from the classes of genetically engineered or nonnative organisms covered by this part.

(ii) The status of various prohibited species and other problematic invasive species in this state, including, but not limited to, a list of infested waterbodies by species.

(iii) Preventing the introduction of and controlling or eradicating invasive species or genetically engineered aquatic plants, birds, crustaceans, fish, insects, mammals, or mollusks.

(iv) Restoration or remediation of habitats or species damaged by invasive species or genetically engineered organisms.

(v) Prioritizing efforts to prevent violations of and otherwise further the purposes of this part.

(vi) The specific areas of responsibility for various state departments under this part and the sharing of information on permits under this part among responsible state departments.

(vii) Educating citizens about their responsibilities under this part and their role in preventing the introduction of and controlling or eradicating prohibited species, restricted species, invasive species, and genetically engineered aquatic plants, birds, crustaceans, fish, insects, mammals, or mollusks.

(viii) Simplifying citizen access to state government for compliance with this part.

(ix) Legislation and funding to carry out the recommendations of the department of natural resources and otherwise further the purposes of this part.

(x) Other matters that the department of natural resources considers pertinent to the purposes of this part.

(b) Establish criteria for identifying waterbodies infested by prohibited species.

(c) Monitor and promote efforts to rescind the exemption under 40 CFR 122.3(a) for ballast water discharges.

(2) The department of natural resources shall carry out its reporting and other duties under this section in cooperation with the aquatic nuisance species council created under Executive Order No. 2002-21 and the department of agriculture.

History: Add. 2005, Act 75, Imd. Eff. July 19, 2005;—Am. 2009, Act 52, Eff. Sept. 21, 2009.

Popular name: Act 451

Popular name: NREPA

324.41325 Boat, boating equipment, or boat trailer with aquatic plant attached; placement in state waters prohibited; order to remove aquatic plants; notice; posting; violation as civil infraction; penalty; definitions.

Sec. 41325. (1) A person shall not place a boat, boating equipment, or boat trailer in the waters of this state if the boat, boating equipment, or boat trailer has an aquatic plant attached.

(2) A law enforcement officer may order the owner or operator of a boat, boating equipment, or boat trailer to remove aquatic plants from the boat, boating equipment, or boat trailer. The owner or operator shall obey such an order.

(3) The department shall prepare a notice that contains a summary of subsections (1), (2), (4), (5), and (6) and shall make copies of the notice available to owners of public boating access sites. The department shall include the notice in relevant department publications and post the notice on its website.

(4) The owner of a public boating access site shall post and maintain the notice described in subsection (3).

(5) A person who violates subsection (1), (2), or (4) is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$100.00.

(6) As used in this section:

(a) "Aquatic plant" means a submergent, emergent, or floating-leaf plant or a fragment or seed thereof. Aquatic plant does not include wild rice (*Zizania aquatica*).

(b) "Boat" means a vessel as defined in section 80104, and "boating" has a corresponding meaning.

History: Add. 2009, Act 91, Imd. Eff. Sept. 15, 2009.

Popular name: Act 451

Compiler's note: NREPA